

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 06-0790 C

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

NEW VENTURES ASSOCIATES, LLC,

Defendant.

JOINT MOTION BY THE PARTIES TO AMEND PRELIMINARY INJUNCTION

Pursuant to Mass. R. Civ. P. 65 and the terms of paragraph twenty (20) of the Preliminary Injunction ordered by the Court in this action on October 20, 2006 and amended by order of the Court on November 1, 2006 (the “Order”), the Commonwealth of Massachusetts (the “Commonwealth”) and defendant New Ventures Associates, LLC (“New Ventures”) hereby jointly move that this Court amend paragraphs 1 (d) and 1 (w) of the Order in the form attached hereto.

In support of this joint motion, the parties state that the Commonwealth filed a Complaint in this action in February 2006 alleging that New Ventures, in the course of closing an uncapped, unlined, inactive landfill in Newburyport (the “Site”), violated the Solid Waste Management Act G.L. c. 111, § 150A, the Massachusetts Clean Air Act, G.L. c.111, §§ 142 A-O, and the regulations promulgated pursuant to these statutes, as well as enforcement orders issued by the Massachusetts Department of Environmental Protection (the “Department”). The parties

entered into and agreed to the terms of the Order prior to its entry by the Court.

Paragraph 1 (d) of the Order currently requires, *inter alia*, that New Ventures install and operate a permanent landfill gas (“LFG”) pretreatment system in conjunction with an automated enclosed flare. Although New Ventures installed and has been operating the pretreatment system and enclosed flare in accordance with the performance standards required by the Order, the Department recently requested that New Ventures modify the piping and other equipment connecting the pretreatment system and enclosed flare to the permanent LFG header at the Site. The Department has also requested that New Ventures develop a written interim operating plan for the LFG system pending completion of the final landfill cap.

To address these issues, the parties hereby jointly move to add two new subparagraphs to the existing paragraph 1 (d) of the Order. New subparagraph 1 (d) (ii) would require, *inter alia*, that New Ventures submit to the Department an “Interim Operation Plan” for operation of the LFG system in accordance with the requirements of Appendix A of the Order pending completion of the final landfill cap. The new subparagraph 1 (d) (iii) would require, *inter alia*, that New Ventures submit for the Department’s approval and thereafter implement a new design plan for the piping system permanently connecting the pretreatment system and enclosed flare to the permanent LFG header at the Site.

As amended, paragraph 1 (d) would now read in its entirety:

1(d)(i) within one hundred ten (110) days of this Order, completely install and begin operating the permanent LFG pretreatment system in accordance with the performance standards in Appendix A. New Ventures shall operate the permanent LFG pretreatment system in conjunction with the automated enclosed flare twenty four (24) hours a day, seven (7) days a week, with demonstrated effectiveness at controlling hydrogen sulfide, sulfur dioxide,

and other LFG emissions to meet the requirements of G.L. c. 111, § 150A, and the implementing regulations at 310 C.M.R. 19.000 *et seq.*, and G.L. c. 111, § 142 A-B, and the implementing regulations at 310 C.M.R. 7.00 *et seq.*, until the Department determines, in writing, that LFG pretreatment is no longer necessary or required as air pollution control and nuisance prevention at the Site;

- (ii) by March 7, 2007, submit to the Department an Interim Operation Plan for operating the landfill gas system, including the extraction system, the pretreatment system, and the enclosed flare, in compliance with the requirements of Appendix A of this Order pending completion of the final cap. The Interim Operation Plan shall include, without limitation, procedures for balancing the landfill gas extraction system, operating the enclosed flare (including a copy of the flare's operating manual), operating the pretreatment system, and operating the temporary header, including the control and removal of condensate and elimination, to the extent feasible, of ambient air infiltration into the temporary header and pretreatment systems. The Weekly Status Report required by Section C of Appendix A to this Order shall include a report by the Engineer on the implementation of the Interim Operating Plan by New Ventures with any recommendations or modifications to the Interim Operating Plan that the Engineer of Record has determined are necessary in order for the landfill gas system to comply with the requirements of Appendix A of this Order, and;
- (iii) by March 1, 2007, submit for the Department's approval a design plan for the permanent piping system that will permanently connect the pretreatment system and enclosed flare to the permanent landfill gas header at the Site. This permanent piping system shall include, without limitation, the installation of a hard pipe system using HDPE pipe and appurtenances conforming to Section 02714 of the project specifications, or equal. The permanent piping system shall also include sampling ports at the inlet and outlet of each pretreatment tank, valves, and a condensate removal / collection system prior to the pretreatment system, all of which are designed to allow continuous operation of the other two pretreatment tanks in series when any one pretreatment tank is shut down, and, further, that shut down of any pretreatment tank does not require a shut down of the enclosed flare or a disconnection of the piping to the tanks and the enclosed flare. New Ventures shall complete the installation of the permanent connection of the pretreatment system and enclosed flare to the permanent header in accordance with this Department approved design plan by the latter of April 1, 2007, or fourteen (14) days from the date of the Department's approval of the design plan.

Paragraph 1 (w) of the Order currently requires, *inter alia*, that New Ventures construct a storm water basin (“Basin 2”) in the Northeast corner of the Facility by January 31, 2007, and that storm water controls for Basin 2 be completed by February 28, 2007 in accordance with a revised corrective action design plan for the landfill received by the Department from New Ventures’ consultant on March 17, 2006 (transmittal No. W046210). On January 5, 2007 and January 19, 2007 (transmittal No. W046210), New Ventures submitted for the Department’s approval an amended revised corrective action design plan that made necessary engineering adjustments to the final berm design for the landfill. Pending the Department’s approval of this amended revised correction action design plan, construction of Basin 2 was delayed by weather and difficulties contracting for the necessary blasting services and New Ventures missed the January 31, 2007 deadline. Because of this delay and the redesign of the final berm, interim erosion controls must be put into place around Basin 2 to control storm water runoff in the event that Spring rains commence before construction of the final berm controls for Basin 2.

Thus, the parties hereby jointly move that paragraph 1 (w) of the Order be amended to add four new subparagraphs that: (a) set a February 26, 2007 deadline for excavation of Basin 2; (b) require that, by March 16, 2007, New Ventures complete installation of temporary erosion controls in accordance with the requirements and specifications set forth in the “Temporary Erosion Control Measures for Phase I and II Areas” appended to the Order as a new “Appendix F,” (c) complete construction and connection of the level spreaders, discharge pipes and other

components of Basin 2 by March 23, 2007, and (d) construct all portions of the berm controls related to Basin 2, including related portions of the berm, within 45 days of the Department's approval of the amended revised corrective action design plan.

As amended, paragraph 1 (w) would now read in its entirety:

1 (w) New Ventures shall:

- (i) by February 26, 2007, complete excavation of Basin 2 in accordance with the amended revised corrective action design plans received by the Department from New Ventures' consultant on January 5, 2007, and January 19, 2007, Transmittal No. W046210;
- (ii) by March 16, 2007, complete installation of temporary erosion controls in accordance with the requirements and specifications in the "Temporary Erosion Control Measures for Phase I and II Areas" plan for the management and control of storm water runoff from the capped Phase I and II areas of the landfill, attached to this Order as "Appendix F";
- (iii) by March 23, 2007, complete construction and connection of the level spreaders, discharge pipes, and all other components of Basin 2 in accordance with the amended revised corrective action design plans received by the Department from New Ventures' consultant on January 5, 2007, and January 19, 2007, Transmittal No. W046210, and;
- (iv) within 45 days of the Department's approval of the amended revised corrective action design plan, construct all portions of berm storm water controls related to Basin 2, including the western and northern berm.

The proposed new Order in its entirety, including the paragraphs 1 (d) and 1 (w) as amended above, is attached as "Exhibit A." The parties hereby move that this Court allow this joint motion to amend the Order in the form attached as Exhibit A.

The Commonwealth and New Ventures state that this joint motion is in the public interest

and should be allowed by the Court as it will ensure optimal connection and operation of the LFG pretreatment system and assure that interim storm water and erosion controls are in place before Spring rains, thus promoting compliance with solid waste laws designed to promote and protect the public health, safety and environment.

WHEREFORE, the parties respectfully request that this Court allow this joint motion and amend paragraph 1 (d) and 1 (w) of the Order in the form attached as Exhibit A.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS NEW VENTURES ASSOCIATES LLC

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